

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement of \$2,639.39 for date of service, 03/22/01.
- b. The request was received on 03/01/02.

II. EXHIBITS

1. Requestor, Exhibit I:
 - a. Initial TWCC 60 and Letter Requesting Dispute Resolution
 1. UB-92s
 2. Medical Audit summary/EOB/TWCC 62 form
 3. Medical Records
 - b. Subsequent Submission of Information
 1. Medical Records
 2. Position statement on the TWCC-60 Disputed Services Table under Tab E
 3. EOBs from other carriers
 - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
 - a. TWCC 60 and Response to a Request for Dispute Resolution
 - b. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. This MDR packet did not contain proof of delivery per Rule 133.307 (g) (3&4). Therefore, all documentation submitted by the Requestor and Respondent will be considered.

III. PARTIES' POSITIONS

1. Requestor: TWCC 60b (under tab E)
“...(Carrier) has failed to provide an adequate statement regarding any methodology used to determine ‘fair and reasonable’ reimbursement in accordance with TWCC Rule 133.304(i)... There is no fee guideline adopted by the TWCC or Rule which reduces ‘fair and reasonable’ to \$0.00. In this case, no MAR or contract is applicable and in the absence of an ASC fee guideline, usual and customary must be paid.”
2. Respondent: Letter dated 07/11/02
“It may be argued that (Carrier’s) payment is invalid because (Carrier’s) payment does not account for regional or geographic differences. However, SOAH has concluded (Carrier’s) methodology meets the statutory standards of the Labor code and that in fact its method does result in a fair and reasonable payment.”

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 03/22/01.

V. RATIONALE

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011 (b) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

The provider has submitted reimbursement data. The provider has submitted EOBs from other carriers. In a review of the EOBs submitted, it is noted that the surgical procedure was the same, but the bills vary in price. For example, the OR charge is as high as \$1400.00 and as low as \$800.00.

The initial bill submitted that is in dispute is broken down into operating room services, iv therapy, supplies, recovery room charges, etc. The provider indicated on the bottom of the bill, please see attached report for detailed break out. Charges are for Ambulatory Surgery Ctr. Facility Fees. The resubmitted bill bundles all the cost together, and indicates, total charges/facility fee. The Requestor's TWCC-60 separates the individual charges. However, the total is considered the facility fees (what the facility charged for providing the facility, equipment and supplies in order for the surgical procedure to be done).

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. The carrier has submitted reimbursement data to explain how it arrived at what it considers fair and reasonable reimbursement. Even though the provider has submitted EOBs from other carriers to document what it considers fair and reasonable reimbursement, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(b) of the Texas Labor Code. The EOBs provide no evidence of amounts paid on behalf of managed care patients of ASCs or on behalf of other non-workers' compensation patients with an equivalent standard of living. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 12th day of August 2002.

Denise Terry, R.N.
Medical Dispute Resolution Officer
Medical Review Division

DT/dt